

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 336 OF 2023

DISTRICT : OSMANABAD

Sanjay s/o Laxmanrao Varhade,)
Age : 55 years, Occu. : Service (as Police Head Constable,))
R/o : Rajiv Gandhi Nagar, Osmanabad,)
Taluka and Dist. Osmanabad.)
.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai-32.)
2. **Director General of Police,**)
Shahid Bhagat Singh Road,)
Kulaba, Mumbai-400001.)
3. **The Inspector General of Police,**)
Near Youth Hostel, Vishrambag Colony,)
Padampura Road, Aurangabad Division,)
Aurangabad-431005.)
4. **The Superintendent of Police,**)
Aurangabad Solapur Road,)
Osmanabad, Dist. Osmanabad-413501.)

... RESPONDENTS

APPEARANCE : Shri M.B. Kolpe, Counsel for the Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**
and
Hon'ble Shri Vinay Kargaonkar, Member (A)

RESERVED ON : **03.11.2023**

PRONOUNCED ON : **05.01.2024**

ORDER**(PER : Hon'ble Justice Shri P.R. Bora, Vice Chairman)**

1. Heard Shri M.B. Kolpe, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for respondent authorities.

2. The applicant has preferred the present Original Application seeking quashment of order dated 10.04.2023 issued by respondent No. 4, whereby the said respondent has compulsorily retired the applicant from service prior to his attaining the age of superannuation.

3. The applicant entered into the Government service as Police Constable. He was promoted as Head Constable in the year 2013 and was posted in Police Motor Transport Division at Osmanabad. In the year 2016, the applicant suffered minor stroke of Paralysis while discharging his duties. He was referred to the hospital and after treatment advised bead rest. He resumed his duties in the month of May, 2017.

4. It is the case of the applicant that while discharging his duties on 06.09.2017 he suffered second stroke of paralysis. He was shifted to Civil Hospital, Osmanabad and on 07.09.2017, he was referred to Ashwini Sahakari Rugnalaya, Solapur. He

remained as indoor patient in the said hospital from 07.09.2017. The final diagnosis was made by the Doctors there and according to them, the applicant had suffered CVA (Cerebro Vascular Accident). It was semi paralysis. It is the further case of the applicant that he was examined by the Standing Medical Board of Dr. V.M. Government Medical College, Solapur and in the said examination, it was revealed that he may not be able to perform the duties of the post, on which he was working. The medical certificate was accordingly issued on 20.11.2018.

5. It is the further contention of the applicant that he was then transferred from Motor Transport Division, Osmanabad to Police Head Quarters, Osmanabad vide order passed on 03.08.2019. As stated in the Original Application, the In-charge Deputy Superintendent of Police, Osmanabad vide his order dated 30.11.2020, extended the protection to the applicant under Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995. In the meanwhile, the applicant was again referred to Medical Board on 17.02.2020. In his examination, the board found that the applicant is completely and permanently incapacitated for further service in the Department, to which he belongs. It is the further contention of the applicant that he has not been paid

salary till December, 2021. On 30.01.2023, the respondent No. 4 issued notice to the applicant and called upon him to give his explanation by referring G.R. dated 10.06.2019 issued by the General Administration Department, Maharashtra State for compulsory retiring the applicant prior to date of his superannuation. On 27.02.2023, the applicant submitted his explanation and prayed not to retire him compulsorily and give him benefit of Rights of Persons with Disabilities Act, 2016. However, the respondent No. 4 vide his order dated 10.04.2023 compulsorily retired the applicant from service. It is grievance of the applicant that the respondent No. 4 while issuing the impugner order has completely ignored the provisions under the Rights of Persons with Disabilities Act, 2016.

6. The respondents have resisted the contentions raised in the Original Application, as well as, prayers made therein by filing their affidavit in reply. The respondent Nos. 3 and 4 only have filed their joint affidavit in reply. It is the contention of respondents that the impugned order of compulsorily retirement of the applicant is legal and valid. It is contended that for considering the ability of the applicant to work, the Review Committee was constituted comprising of Dy. Superintendent of Police (Head Quarter) as Chairman and Dy. Superintendent of

Police ACB and Office Superintendent of S.P. office Osmanabad as Members. The said committee reviewed the cases of 47 policemen including the present applicant. The said committee unanimously opined that not to continue the applicant till the age of his superannuation and recommended to retire him on retiring pension on completion of 55 years of age. The recommendations of the committee were communicated to the applicant on 30.01.2023 and his say was called thereon. It is further contended that though the provisions under the Rights of Persons with Disabilities Act, 2016 may apply in the case of the applicant, it would not be proper to continue the Government servant till the age of superannuation neglecting the recommendations of the Review Committee. It is further stated that as per the provisions of Rule 10(4) and 65 of the Maharashtra Civil Services (Pension) Rules, 1982, it is policy of the Government to retire the Government servants at the stage of completion of 55 years of age or 30 years qualifying service, whichever is earlier. It is further contended that the applicant is found permanently and completely incapacitated for further service by the committee and therefore, he has been rightly retired compulsorily. The respondents have further referred to the Circular issued by the General Administration Department

dated 10.06.2019 and have stated that the same cannot be made applicable in case of the applicant. The respondents have on all above grounds prayed for rejecting the present Original Application filed by the applicant.

7. Shri M.B. Kolpe, learned counsel appearing for the applicant criticizes the impugned order on various grounds. Learned counsel submitted that the provisions under the Rights of Persons with Disabilities Act, 2016 are not properly appreciated by the respondents. Learned counsel submitted that the impugned order is contrary to the provisions under Section 20 of Rights of Persons with Disabilities Act, 2016. Learned counsel referring to the judgment of the Hon'ble High Court of Bombay in the case of **Ramesh Limbraj Gholve Deceased through Lrs. Vs. State of Maharashtra and Ors., 2021 SCC OnLine Bom 11859**, as well as, judgment of the Hon'ble Apex Court in the case of **Jeeja Ghosh and Another Vs. Union of India and Ors., (2016) 7 Supreme Court Cases 761** submitted that passing of an impugned order is arbitrary exercise of power by the respondents. Learned counsel emphasized on the provisions under Section 20 of the Rights of Persons with Disabilities Act, 2016 and submitted for quashing impugned order and to grant all consequential reliefs to the applicant.

8. Shri I.S. Thorat, learned Presenting Officer supported the impugned order. Learned P.O. submits that the provisions under the Disabilities Act, 2016 are in addition to, and not in derogation of any other law for the time being in force. Learned P.O. submitted that the provisions of Maharashtra Civil Services Rules are applicable in the case of the applicant and as such, the respondents have rightly issued the impugned order, thereby compulsorily retiring the applicant.

9. We have duly considered the submissions made on behalf of the applicant, as well as, state authorities. The question involved in the present matter is 'whether the applicant is entitled to seek the benefit of Section 20 of the Rights of Persons with Disabilities Act, 2016'. I deem it appropriate to reproduce the entire said Section 20, which reads thus :-

“20. Non-discrimination in employment.- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment :

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service :

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits :

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

More relevant is sub-clause (4) thereof, which says that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. It is not disputed that while in service, the applicant twice suffered stroke of paralysis. The applicant has placed on record the certificate dated 20.11.2018 issued by the Medical Board, whereby the applicant has been certified to be permanently incapacitated for carrying out any work.

10. In the matter before the Division Bench of the Hon'ble High Court of Bombay in the case of **Ramesh Limbraj Gholve Deceased through Lrs. Vs. State of Maharashtra and Ors., 2021 SCC OnLine Bom 11859**, the similar issue was for consideration. Para Nos. 16 to 19 of the said judgment are relevant, which reads thus :-

“16. We find from the record that after this Court passed an order on 23.01.2019 in Writ Petition No.436 of 2018, the Civil Surgeon, Osmanabad issued a medical certificate on 06.02.2019 declaring the employee unfit for any office related work. Taking the facts situation into consideration, the

competent authority delivered the impugned order granting the prayers put forth by the employee.

17. *We are of the view that in such cases, wherein a hapless employee unfortunately suffers a disabling ailment, his first worry and anxiety is as to who would feed his family. In some cases, huge medical expenditure is incurred. In the present case, the widow of the employee has several medical documents to indicate an expenditure of about Rs.12,85,199/-. There are several instances wherein employers have shown the magnanimity and a humane approach in considering the unfortunate situation of such employees and have ensured that the employee is offered sufficient medical aid, inasmuch as, the salary is continued so as to enable him to survive.*

18. *The learned counsel for the company relies upon the second medical certificate dated 31.03.2019, wherein the Civil Surgeon, Osmanabad has noted that the employee was unfit for Technician post. While granting such a certificate, the Civil Surgeon has not scored out the words “मानसिक दृष्ट्या” which are found in the printed form suffixing “शारीरिक दृष्ट्या”. The company, therefore, contends that the employee was mentally unfit. We are unable to accept this contention for the reason that the SP Institute of Neuro Sciences found the employee to be suffering from paralysis and it opined that he was fit for a lighter job. The first medical certificate dated 06.02.2019 issued by the Civil Surgeon indicated that the employee was physically unfit and would not perform office related work. It is noteworthy that when the company terminated the employee on 05.01.2018, it had the medical certificate of SP Institute of Neuro Sciences as well as of the Civil Surgeon, Osmanabad indicating that the employee was fit for a lighter job and that he was unfit for a Technician post, respectively.*

19. *Considering the above, we are of the view that terminating an unfortunate employee is the last resort to an employer. The employer should get such an employee well examined by a Medical Board or, in view of the 2016 Act by a Medical Authority, which is created under the Department of Empowerment of persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. Only after being fully convinced that the employee has been reduced to an immobile patient and is purely physically in existence and confined to the bed without being able to move any limb, that Rule 17 (note-1)(ii) could be pressed in service. No employer can behave in a ruthless manner and with a stone heart. Instead of showing sympathy and compassion towards such an employee,*

the company before us has acted without any sympathy or a humane touch.”

11. Learned counsel for the applicant has also referred to the judgment delivered by the Principal Bench of this Tribunal at Mumbai in O.A. No. 122/2023 (Shri Chanbasayya S. Sangamath Vs. The Commissioner of Police, Solpar & Anr.). In the said matter, the applicant was declared unfit for his continuation in the employment and was therefore, retired from the service by granting him invalid pension. This Tribunal after having considered the various judicial pronouncements on the subject set aside the order and directed respondents therein to keep the said applicant on supernumerary post till he attains the age of superannuation and extend the service benefits as per his entitlement in terms of Section 20(4) of 'Act of 2016'.

12. It appears to us that the facts of the present case are identical to the facts which existed in both the aforesaid matters, one before the Hon'ble High Court and another before this Tribunal at Mumbai. The applicant has placed on record sufficient medical evidence substantiating his contention that he is totally incapacitated for carrying out any duty assigned for his post. The medical evidence is not challenged by the respondents. In the circumstances, on the ground that the

applicant has lost his capacity to carryout duties of his post (as mentioned in the impugned order completely and permanently incapacitated for further service in the Department, to which he belongs), the respondent No. 4 could not have passed an order thereby compulsorily retiring the applicant on the said ground. It appears that the respondent No. 4 has completely lost sight of the provisions under the Rights of Persons with Disabilities Act, 2016 and more particularly Sub-section (4) of Section 20 thereof. First proviso to Sub-section (4) says that if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits. Second proviso going one step ahead states that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. In the instant matter, if in the opinion of respondent No. 4 after acquiring disability the applicant had not remained suitable for the post he was holding, the respondent No. 4 should have shifted the applicant to some other post with the same pay scale and service benefits and if it was not possible to adjust the applicant at any post, the respondent No. 4 must have kept

the applicant on a supernumerary post until a suitable post becomes available or the applicant attains the age of superannuation, whichever is earlier.

13. For the reasons elaborated hereinabove, the order passed by respondent No. 4 on 10.04.2023 has to be quashed and set aside. In the result, the following order is passed :-

ORDER

- (i) Order dated 10.04.2023 is quashed and set aside.
- (ii) Since the applicant has become incapable of performing duties of the post he was holding, the respondents shall shift the applicant to some other post with the same pay scale and service benefits on which it may be possible for the applicant to discharge duties of the said post.
- (iii) It is further directed that if the respondents find that it is not possible to adjust the applicant against any post, he may be kept on supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.
- (iv) The Original Application is allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

VICE CHARIMAN

PLACE : Aurangabad.

DATE : 05.01.2024

KPB S.B. O.A. No. 336 of 2023 PRB Compulsory Retirement